IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:6.12.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.17533 of 1999

A.Venkatesan .. Petitioner
Prop.Prakash Engineering Works,
Salem-636 004.

Versus

1.The Superintending Engineer
Tamilnadu Electricity Board
Udayapatti, Salem 636 005.

2.The Executive Engineer
Operation and Maintenance/West
Tamilnadu Electricity Board
Salem 636 005.

3.The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Swarnapuri,Salem-636 016.

4.The Assistant Engineer
Operation and Maintenance/West
Tamilnadu Electricity Board
Mamangam, Salem 636 005.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus to call for the records of the 1st respondent in Proceedings No.SE/SEDC/Salem/AEE.GL./AE/ F.SC.No.105/PR.341-2/99 dated 27.9.1999 and of the 2nd respondent in Letter No.EE/W/SLM/JE.I/F.Doc./PR 72/99 dated 22.12.1998 and quash the same and direct the respondents to repay or adjust the sum of Rs.1,10,000/- in the future consumption charges of the petitioner.

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For petitioner :Mr.K.Selvaraj

For respondents :Mr.S.N.Kirubanandam

O R D E R

Heard Mr.K.Selvaraj, the learned Senior Counsel appearing for the petitioner and Mr.S.N.Kirubanandam, the learned counsel appearing on behalf of the respondents.

2.It is stated by the petitioner that he is running an industry hardening metals by heat treatment process. He has an electricity service connection in S.C.No.105/ Industrial Estate, Salem-4. On 10.12.1998, the Anti Power Theft Squad; having checked the meter of the petitioner, had stated that two phases in the meter were not functioning. After the inspection, the Tamill Nadu Electricity Board's Operation and Maintenance staff had removed the defective meter and replaced it with another meter. Thereafter, the third respondent had issued an intimation, dated 22.12.1998, calling upon the petitioner to pay an amount of Rs.6,97,164/-. The third respondent had also alleged that there was an inspection conducted by the Anti Power Theft Squad, Salem, on 13.5.1996 and it was found that only one phase of the meter was functioning at the time of the inspection. On 28.5.1999, the second respondent had issued a notice stating that since the petitioner had opted to pay the short levy of current consumption charges in monthly instalments his failure to pay the amount would entitle the respondents to disconnect the service connection of the petitioner without further notice. Thereafter, the first respondent, by an order, dated 27.9.1999, had confirmed the order passed by the third respondent directing the petitioner to pay the short levy balance amount of Rs.6,97,164/-, as the petitioner had already paid a sum of Rs.90,000/-. Challenging the order passed by the third respondent, dated 22.12.1998, as confirmed by the first respondent in his order, dated 27.9.1999, the petitioner has preferred the present writ petition.

3.The main contention raised on behalf of the petitioner is that the impugned orders have been issued without giving him an opportunity of being heard. It has also been stated by the learned counsel for the petitioner that the Anti Power Theft Squad of the Tamil Nadu Electricity Board, had conducted the inspection only on 10.12.1998 and not on 13.5.1996, as alleged by the respondents. Even otherwise, the respondents could direct the petitioner to pay the short levy due only as provided under Section 26(6) of the Indian Electricity Act, 1910, and as held by the Division Bench of this Court in its order, dated 2.7.1997, in W.A.No.971 of 1995 (M/s Cresent Paper Industries, Ranipet, vs. The Asst. Executive Engineer, Operation and Maintenance,

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Vellore Ambedkar Electricity Distribution Circle, Ranipet and another).

4.It has also been stated by the petitioner that he had agreed to pay the amount of short levy in instalments only under protest and that would not amount to accepting the short levy amount as claimed by the respondents.

5.Though the learned counsel appearing for the respondents had denied the claims made by the petitioner, it has been accepted that the short levy amount from the petitioner can be demanded only in accordance with the provisions of law, as prescribed by the Indian Electricity Act, 1910, as held by the Division Bench of this Court cited supra.

6.In such circumstances, based on contentions raised on behalf of the petitioner as well as the respondents, this Court is of the considered view that the impugned proceedings have been passed without giving the petitioner sufficient opportunity to establish his claims and also without following the provisions of law prescribed in the Indian Electricity Act, 1910.

7.Therefore, the writ petition is allowed and the impugned proceedings are set aside, giving liberty to the respondents to pass appropriate orders, in accordance with the provisions of law, after giving the petitioner a reasonable opportunity of hearing. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

rpa

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To

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Mamangam, Salem 636 005.

+1cc to Mr.K.Selvaraj, Advocate Sr 72050

DM(CO)
km/23.1.

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